

# **Illinois EPA – U.S. EPA Joint CAFO Training**

## **NPDES Permit Requirements**

**November 15, 2011**



# Clean Water Act

- The Act prohibits discharges of pollutants from point sources to waters of the U.S., unless the discharge is in compliance with an NPDES permit
- Concentrated animal feeding operations (CAFOs) are point sources under the Act
- EPA regulations apply to both CAFO production and land application areas



# Discharge of a Pollutant

- Defined in the Clean Water Act as “any addition of any pollutant...from a point source to waters of the U.S.”
- Any addition of any pollutants from a CAFO production area
- Any addition of any pollutants from a CAFO land application area, except pollutants added in agricultural storm water



# Agricultural Storm Water

- CWA §504 excludes agricultural storm water from definition of term point source
- Discharges during dry weather are not storm water and therefore not agricultural storm water discharge
- Discharges from production areas never qualify as agricultural storm water



# Agricultural Storm Water

- Precipitation-related discharge from land under control of CAFO where manure, litter or process wastewater has been applied in accordance with practices that ensure appropriate utilization of nutrients, as specified in § 122.42(e)(1)(vi) – (ix)
- Land application practices that do not ensure appropriate agricultural utilization of nutrients are discharges subject to the CWA





# Agricultural Storm Water

- § 122.42(e)(1)(vi) – (ix) practices:
  - Conservation practices, including as appropriate buffers or equiv. practices, to control runoff of pollutants to waters of the U.S.
  - Appropriate testing of manure, litter, process wastewater, and soil
  - Site-specific practices that ensure appropriate agricultural utilization of nutrients
  - Recordkeeping



# Agricultural Storm Water

- Site-specific practices that ensure appropriate agricultural utilization of nutrients are those practices in accordance with technical standards for nutrient management
- If practices are based on alternative standards, CAFO is responsible to demonstrate that such alternatives are appropriate



# Agricultural Storm Water

- Permitting authority will evaluate practices against technical standards
- Must maintain records, both planning and implementation, to document implementation of site-specific practices
- No records = no ag storm water exclusion



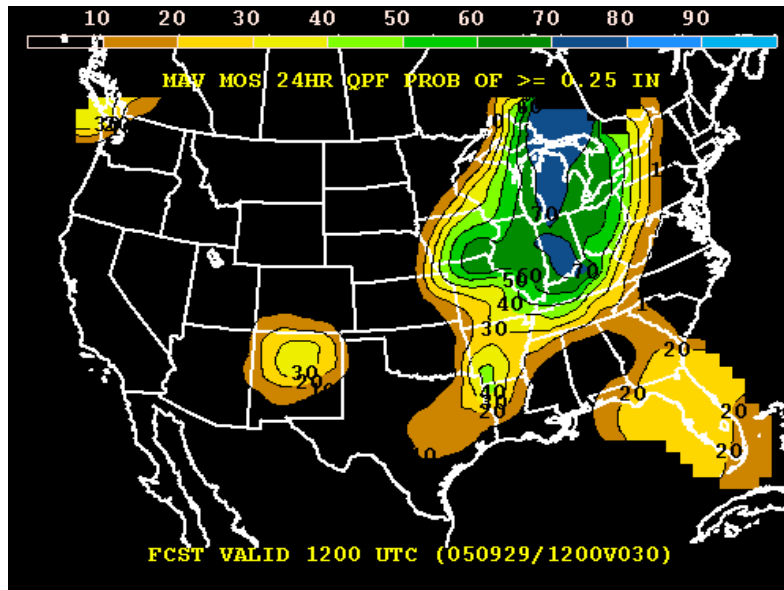


# Agricultural Storm Water

- Rate of application:
  - Up to nitrogen agronomic rate when risk of phosphorus movement to surface water is low or moderate
  - One-year P agronomic rate when risk of P movement is high
  - No application when risk of P movement is very high

# Agricultural Storm Water

- Timing of surface application:
  - Forecasted rain
  - Snow





# Who Must Apply for a Permit?

- 2008 CAFO regulations stated that CAFOs that discharge or propose to discharge must seek authorization to discharge under a NPDES permit
- On March 15, 2011, Fifth Circuit Court of Appeals issued *National Pork Producers Council v. EPA* (“NPPC”), 635 F.3d 738 (5<sup>th</sup> Cir. 2011)



# Who must apply for a permit?

## NPPC decision

- Court vacated EPA's regulatory requirement that CAFOs that "propose to discharge" have NPDES permits
- Court upheld EPA's authority to impose a duty to apply for CAFOs that discharge





# Who must apply for a permit?

## NPPC: EPA's points of emphasis

- CAFOs that discharge without a NPDES permit are in violation of CWA
- CAFOs that discharge must obtain and comply with NPDES permit, and meet other requirements of 2003 and 2008 rules
- States need to continue to issue permits for CAFOs that discharge
- EPA is revising *Implementation Guidance on CAFO Regulations – CAFOs that Discharge or Are Proposing to Discharge*





# Who must apply for a permit?

- Owner or operator of an unpermitted CAFO is never authorized to discharge from the CAFO
- Requirement to seek NPDES permit coverage applies to all owners and operators of CAFOs that discharge regardless of the volume or duration of the discharge
- Any discharge of pollutants, continuous, intermittent or sporadic, require NPDES permit coverage



# Who must apply for a permit?

- CAFO that has discharged without a permit remains in violation of the CWA so long as there is a continuing likelihood that intermittent or sporadic discharges will recur  
*Chesapeake Bay Foundation, Inc. v. Gwaltney of Smithfield*, 890 F.2d 690, 693 (4<sup>th</sup> Cir.1989)
- CAFOs that have discharged in the past are likely to discharge in the future unless the conditions that led to the discharge are fully remedied



# Who must apply for a permit?

- To avoid liability for an unpermitted discharge EPA recommends CAFO regularly evaluate all factors that may lead to a discharge and apply for a permit prior to discharging
- Some recommended factors to evaluate include
  - design
  - construction
  - O&M
  - land application practices



# Permit Scenarios



# For More Information

- <http://cfpub.epa.gov/npdes/afo/aforule.cfm>

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